



Bureau of the Public Debt's  
Administrative Resource Center

## Human Resources Directive Franchise Services

**Number:** HRD FS 792-2  
**Original Issue**  
**Date:** October 2000  
**Review Date:**

**Subject:** Life Threatening Contagious Illnesses Including Acquired  
Immune Deficiency Syndrome

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1. **PURPOSE** Establishes policy concerning the impact of life threatening contagious illnesses, including AIDS and Human Immunodeficiency Virus (HIV), on the workplace.
2. **SCOPE** Applies to all employees.
3. **REFERENCES**
  - a. 5 U.S.C. Section 552a, The Privacy Act of 1974.
  - b. 5 U.S.C. Part 297, Protection of Privacy and Personnel Records.
  - c. 29 C.F.R. Part G, Prohibition Against Discrimination Because of Physical or Mental Handicap.
4. **RESPONSIBILITIES**
  - a. The Head of the Agency has overall responsibility for developing and carrying out policies related to life threatening contagious illnesses. As necessary the head of the agency will:
    - (1) Ensure that policies are consistent with appropriate regulations and guidance.
    - (2) Ensure that employees are informed of this policy, and kept informed of any changes to the policy.
    - (3) Ensure that discriminatory practices do not exist.
    - (4) Make counseling and assistance available to supervisors and affected employees.
    - (5) Ensure that privacy and confidentiality of employee records are maintained.

- b. Supervisors should:
  - (1) Deal with employee concerns and other issues related to HIV-infected employees in the workplace.
  - (2) Consult with the human resources staff should life threatening contagious illnesses become a topic of concern in their organization.
  - (3) Ensure the confidentiality of information concerning employees and maintain records consistent with law, rule and regulation.
- c. Employees are responsible for:
  - (1) Adhering to the policy outlined in this directive.
  - (2) Taking advantage of any training material or opportunities that are made available.

## 5. **POLICY**

- a. Employees will not be discriminated against on the basis of their medical condition. This includes those having been diagnosed with AIDS or tested positive for HIV, or are suspected of having these conditions.
- b. Employees with a life threatening contagious illness can use their sick or annual leave for treatment or recuperation. They may also request leave without pay or advance leave for these same purposes. Leave is granted using the same standards as those used for all employees.
- c. An employee with a life threatening contagious illness may be eligible for leave without pay under the Family and Medical Leave Act of 1993 (FMLA).
- d. An employee with a life threatening contagious illness may participate in the leave-sharing program in the same manner as all other employees.
- e. An employee with a life threatening contagious disease can request reassignment to another agency office if it will help his/her condition. The employee will be considered for reassignment if a vacancy exists for which he/she is fully qualified.
- f. Employees may work as long as their performance is

acceptable and their attendance at work is not a threat to themselves or others in the work place.

- g. Employees who have a life threatening contagious illness shall be counseled regarding disability retirement. They will be encouraged to submit their application in time to allow disability retirement benefits to begin when they are no longer able to work. The agency will, to the extent possible, be sensitive to the need to quickly process disability retirement applications.
- h. Employee Assistance Program (EAP) counselors are available to provide counseling to any employee regarding his or her medical condition or personal rights.
- i. Employees with medical problems will be treated with the same respect and dignity accorded to all individuals in the work place.
- j. No medical basis exists to refuse to work with employees or with clients who have AIDS or are HIV positive. An employee who refuses to work with a co-worker or client who has, or is suspected of having, AIDS or HIV will be provided counseling. An EAP counselor (or another appropriate resource) will provide this counseling along with additional educational information. This counseling will occur prior to the initiation of any formal disciplinary or other personnel action. If after receiving this counseling, the employee continues to refuse to work with the co-worker or client, corrective action will be taken.

6. **EMPLOYEE  
EDUCATION**

- a. Employee education concerning life threatening contagious diseases, including AIDS, is essential. To meet this need, the agency will make information on this topic available to employees.
- b. Periodically, training should be offered to all employees. This training will be coordinated with the EAP contractor. Special sessions can be offered in situations where a specific need is recognized.
- c. Employees must be made aware of, and have access to, the agency's policy on life threatening contagious disease. Employees will be provided either an electronic copy or a hard copy of this policy and the attached questions and answers.

- d. Supervisors and managers will be provided training on this policy and their responsibilities to administer it.
- 8. **CONFIDENTIALITY** The agency will strictly adhere to all applicable privacy and confidentiality requirements associated with any verbal or written communication connected with employees suffering with HIV or other life threatening contagious illness.
- 9. **OFFICE OF  
PRIMARY  
INTEREST** Administrative Resource Center, Human Resources Division.

## **GUIDANCE TO SUPERVISORS**

### Questions and Answers

- 1. Q. What is AIDS?
  - A. AIDS stands for Acquired Immune Deficiency Syndrome. It describes the general condition that may develop following exposure to Human Immunodeficiency Virus (HIV). This virus attacks a person's immune system and damages the body's ability to fight other diseases. It makes the person vulnerable to bacteria, viruses and malignancies that can cause life-threatening illnesses such as pneumonia, meningitis, and cancer.
- 2. Q. How is the HIV transmitted?
  - A. Current medical information indicates that HIV can be transmitted through the exchange of blood, blood products, or semen between individuals. These exchanges are normally associated with sexual intercourse, blood transfusions, pre-natal transmissions, and the sharing of hypodermic needles by intravenous drug users.
- 3. Q. Can you be exposed to HIV by donating blood?
  - A. No. Donating blood through recognized organizations is not considered risky. Since equipment used for blood donations is new, sterile and never used again, the person donating blood cannot be exposed to HIV.
- 4. Q. Where can I get confidential answers to questions I have about AIDS and HIV?
  - A. Contact your EAP counselor or health unit nurse, if available. They can provide you with information and a list of other referral resources.

5. Q. Can an employer take adverse action against an employee who is HIV-positive based on fear of contagion?
- A. No. The overwhelming evidence from current medical information indicates that HIV cannot be spread through casual contact. Employees who are HIV positive should be treated in a non-discriminatory manner.
6. Q. Can an employer deny employment to an otherwise qualified applicant who is HIV- positive?
- A. No. Employment cannot be denied if the applicant can performs the critical functions of the job without endangering his/her health and safety or that of others, with or without reasonable accommodation.
7. Q. An employee has told everyone in the office that he/she is HIV-positive. One person has asked to be moved out of the office. What do I do?
- A. You should contact your human resources staff to arrange for someone to speak to your employees regarding HIV. Usually this will be a physician or other health professional. The bottom line, however, is that you must not give any special consideration to such coworker requests beyond what you normally would. If necessary, you must consider refusal to work by the coworker to be misconduct and deal with it accordingly.
8. Q. If I suspect that an employee may be HIV-positive, should I try to find out for sure?
- A. No. Until an employee develops performance or conduct problems or requests extended leave, the employee's privacy must be respected. However, it would be a good idea to discuss your suspicions with the human resources staff.
9. Q. An employee who has been out on extended sick leave for a month is due back tomorrow. The rumor is that the employee has AIDS. What do I do?
- A. Even if you know that the employee has AIDS, you cannot share that information with coworkers. All health related information about employees is strictly confidential. Again, refusal to work with an ill employee is unacceptable behavior and must be dealt with accordingly.
10. Q. I have become aware that an employee has been telling others in the office that a coworker is HIV-positive. What should I do?
- A. You should ask the employee to refrain from spreading information or rumors regarding any coworker's health condition. In a very real sense, the rumor-spreading employee is disrupting the office and the employee could be disciplined if this behavior does not cease.

11. Q. Are there any circumstances in which I may inform coworkers that a fellow employee has AIDS?
- A. Generally, no. The only time you could inform coworkers is when an employee has released you from obligation under the Privacy Act and has asked you to inform coworkers. You should, however, seek assistance from the human resources staff before any employees are informed.
12. Q. I have become aware that an employee of mine has a serious disease that could be contagious in an office environment. Can I inform coworkers that they may have been exposed?
- A. Each case of this type must be evaluated individually. There is a provision in the Privacy Act for disclosure of information in medical emergencies. Before any disclosure is made, your servicing human resources staff should be contacted.
13. Q. What does “reasonable accommodation” consist of for an employee who is HIV-positive?
- A. Once it is established that HIV or any other handicapping condition is present, there is an obligation to reasonably accommodate the handicap. The most common types of reasonable accommodation are: reassignment, job assistance, job restructuring, light duty, flexible or reduced work schedules and most likely, extended leave. You should also protect the HIV positive employee, to the extent possible, from other contagious illnesses. The human resources staff should always be contacted in cases of reasonable accommodation.
14. Q. May I grant extended sick leave or leave without pay (LWOP) to a person suspected of having HIV?
- A. Yes. However, you should first request that the employee provide adequate medical documentation to support the request. Requests of this type should be coordinated with you servicing human resources staff. A request for leave without pay under the FMLA must meet the requirements of that program.
15. Q. How much advance sick leave can be granted to an employee with a life threatening illness if there is a possibility they will not return to work?
- A. Up to 240 hours of sick leave may be legally advanced to a seriously ill employee. However, advance sick leave should be limited to the amount of leave the employee can be reasonably expected to repay. If the employee is not expected to return to duty, advance sick leave should not be approved. Leave without pay may be substituted at the supervisor’s discretion. Keep in mind that under the FMLA, employees are entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for specific medical needs. Any FMLA requests should be coordinated with your servicing human resources staff.

16. Q. Can I require an employee to take sick or annual leave when they appear unable to perform their duties?
- A. Use of enforced leave has been limited by recent court decisions. When a physically disabled employee is not “ready, willing, and able” to work and medical evidence is on hand, enforced leave may be appropriate. Your servicing human resources staff should be contacted for a thorough discussion of the issues before any action of this type is taken.
17. Q. Can management order an employee to take a medical examination when their health appears to be affecting performance or causing the use of extensive leave?
- A. No. Management may offer an examination to obtain medical information or supplement medical documentation supplied by the employee. The agency may not take disciplinary action based on an employee’s refusal to take the examination. It should be kept in mind, however, that in the absence of medical documentation, the agency is not required to advance sick leave or grant extended LWOP. Generally, it is expected that employees will provide all necessary medical information.
18. Q. Do I have to indefinitely tolerate a situation in which an employee is clearly unable to perform?
- A. No. But before any action is taken, management should make every effort to deal with the problem in a sensitive manner and work with the employee. Almost always, when an employee’s illness reaches a stage where recovery appears remote, the employee will voluntarily leave the rolls.
19. Q. How soon can an employee who is HIV-positive apply for disability retirement and what are the general eligibility requirements?
- A. An employee may file for disability retirement when the illness has reached the stage that the employee can no longer perform the duties of the position. The basic eligibility requirements are at least 5 years of civilian service under CSRS, or 18 months of service under FERS. Application must be made before separation from the service or within 1 year thereafter.
20. Q. May I encourage an employee who is HIV-positive to file for disability retirement?
- A. Yes. When an employee clearly reaches a stage of the disease at which they have difficulty performing the duties of their position, the employee should be encouraged to investigate disability retirement.
21. Q. Is it appropriate to suggest to an employee who has a life threatening disease, or who is suspected of having such a disease, that they visit an EAP counselor or a health unit nurse?

- A. As a supervisor, you may at any time suggest a visit to the EAP counselor or a health unit nurse if you believe the employee has a personal problem. A life threatening disease of any type would certainly qualify as such a problem.